

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW
COMMISSION**

MARA L. RASURE,
APPELLANT,

CASE NO: 22R 0850

V.

**DECISION AND ORDER
REVERSING THE DECISION
OF THE DOUGLAS COUNTY
BOARD OF EQUALIZATION**

DOUGLAS COUNTY BOARD
OF EQUALIZATION,
APPELLEE.

I. BACKGROUND

1. The Subject Property is an unimproved residential parcel in Douglas County, parcel number 2403400355.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$77,300 for tax year 2022.
3. Mara L. Rasure (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$77,300 for tax year 2022.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on August 22, 2023, at the Omaha State Office Building, 1313 Farnam Street, Room 227, Omaha, Nebraska, before Commissioner Steven Keetle.
7. Roger Wallace was present at the hearing for the Taxpayer.
8. Scott Barnes and Michael Lunkwitz with the County Assessor's Office (the County Appraisers) were present for the County Board.

II. APPLICABLE LAW

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
10. The Commission's review of a determination of the County Board of Equalization is de novo.²
11. When considering an appeal, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."³ That presumption "remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board."⁴
12. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

¹ Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

² See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019, 759 N.W.2d 464, 473 (2009).

³ *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

⁴ *Id.* at 283-84.

⁵ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject is a 2.02-acre unimproved residential parcel located on the Elkhorn River.
17. The County Board presented the Property Record File (PRF) for the Subject Property. The PRF contains information about the characteristics of the Subject Property and information regarding the qualified sales that occurred in the economic area of the Subject Property. This information was used to determine the value attributed to each of the residential properties in the area, including the Subject Property.
18. The PRF for the Subject Property indicates that the market area in which the Subject Property is located underwent a land review for tax year 2022.
19. The Taxpayer alleged that the assessed value of the Subject Property should be its purchase price.
20. The Taxpayer purchased the Subject Property in July of 2018, for \$30,500.
21. "It is true that the purchase price of property may be taken into consideration in determining the actual value thereof for assessment purposes, together with all other relevant elements pertaining to such issue; however, standing alone, it is not conclusive of the actual value of property for assessment purposes. Other matters relevant to the actual value thereof

⁷ *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

must be considered in connection with the sale price to determine actual value. Sale price is not synonymous with actual value or fair market value.”⁹

22. “Pursuant to § 77-112, the statutory measure of actual value is not what an individual buyer may be willing to pay for property, but, rather, its market value in the ordinary course of trade.”¹⁰
23. The Taxpayer alleges that the Subject Property is highly erodible, and he does not know if it is a buildable lot.
24. The County Appraisers stated that the sale of the Subject Property would not be considered by the County Assessor’s office as it occurred prior to the two-year sales window used for valuing properties for the 2022 tax year.
25. The County Appraisers stated that the area around the Subject Property has lots overlooking the Elkhorn River or lots that have access to the Elkhorn River like the Subject Property (which has both) that appear to be unbuildable still sell and have homes built on them, therefore the County Assessor’s office treats lots as buildable unless it is demonstrated that they cannot be built on.
26. The County Appraisers stated that the Subject Property was marketed as a buildable lot as part of the 2018 purchase and that the marketing materials indicate that it was “priced for immediate sale.”
27. The County Appraisers further state that the Subject Property is directly adjacent to another parcel owned by the Taxpayer.
28. The Taxpayer presented an appraisal report for the Subject Property that indicates that it was performed according to professional standards (the Appraisal Report).
29. When an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was

⁹ *Forney v. Box Butte County Bd. of Equalization*, 7 Neb.App. 417, 424, 582 N.W.2d 631, 637, (1998).

¹⁰ *Cabela’s, Inc. v. Cheyenne Cty. Bd. of Equal.*, 8 Neb. App. 582, 593, 597 N.W.2d 623, 632 (1999) (citations omitted).

performed according to professional standards, the appraisal is considered competent evidence under Nebraska law.¹¹

30. The Appraisal Report uses a single sale, the sale of the Subject Property, in its determination of value. The Commission finds the supporting information regarding adjustments, similar properties, and other analysis contained in the Appraisal Report insufficient to explain the Appraisal Report's determination of value.
31. The Commission gives little weight to the determination of value found in the Appraisal Report.
32. The Taxpayer alleged that the assessed value of the Subject Property was not equalized with other comparable properties.
33. The Taxpayer presented a table containing information regarding seven properties he alleged were comparable to the Subject Property. The Taxpayer also provided the PRF for each of the seven properties contained in the table.
34. The County Appraisers stated that three of the properties presented by the Taxpayer were located in different market areas and subject to different market factors and therefore not comparable to the Subject Property.
35. One of the other properties presented by the Taxpayer does not have river access and would therefore not be comparable to the Subject Property.
36. Another of the properties presented by the Taxpayer is over eight times the size of the Subject Property and would not be comparable to the Subject Property.
37. The two remaining parcels are also the parcels that the Taxpayer alleged are the most comparable to the Subject Property.
38. The Taxpayer's spreadsheet contains information from the County Assessor's web site indicating that the Subject Property had a 50% river erosion factor applied while the two remaining

¹¹ *Cain v. Custer Cty. Bd. of Equal.*, 298 Neb. 834, 850, 906 N.W.2d 285, 298 (2018).

comparable sales have a 75% river erosion factor applied. These factors are not shown on the PRF for any property.

39. The County Appraisers stated that the river erosion discounts were applied as follows: a 75% river erosion factor means a 25% discount is applied; a 50% river erosion factor means a 50% discount is applied.
40. The PRF for the two remaining properties offered by the Taxpayer as comparables do show differences from the Subject Property one is classified as market, as is the Subject Property, but is 5.64 acres (Comp 1) and the other is classified as waste but is 3.05 acres (Comp 2).
41. The County Appraisers were unable to tell the Commission what the residential waste classification was.¹²
42. The County Appraisers could not explain to the Commission how the land valuation analysis applied to the Subject Property or the Taxpayer's two remaining properties in terms of discount factors, classification as waste, or size cutoffs for per acre values, and this information was not contained on the PRFs.
43. Where the record contains cryptic information without explanation, and no explanation of this cryptic information is provided by the document or later testimony to explain the significance of this information, the information is worthless.¹³
44. Based on the documents and statements presented the Subject Property has a value of \$76,574 per acre prior to the river erosion factor, and the two remaining parcels presented by the Taxpayer have a value of \$14,515 per acre¹⁴ (Comp 1) and \$20,372 per acre¹⁵ (Comp 2) prior to the river erosion factor.

¹² Waste as a classification is typically a subclassification of agricultural or horticultural property. See, Title 350 Neb. Admin. Code ch 14, §002.54 (3/09).

¹³ *Kawasaki Motors v. Lancaster Cty. Bd. of Equal.*, 7 Neb. App. 655, 658, 584 N.W.2d 63, 66 (1998).

¹⁴ \$61,400 assessed value ÷ .75 river erosion = \$81,866 ÷ 5.64 acres = \$14,515, per acre.

¹⁵ \$46,600 assessed value ÷ .75 river erosion = \$62,133 ÷ 3.05 acres = \$20,372 per acre.

45. Uniformity requires that whatever methods are used to determine actual or taxable value for various classifications of real property that the results be correlated to show uniformity.¹⁶
46. There were no information or statements presented to the Commission to explain the impact of the difference in size or the waste factor on the values of the Subject Property, Comp 1, or Comp 2, or to correlate their values for purposes of uniformity.
47. “Taxpayers are entitled to have their property assessed uniformly and proportionately, even though the result may be that it is assessed at less than the actual value.”¹⁷
48. The equalized value of the Subject Property based on the information presented at the hearing is \$14,660¹⁸
49. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
50. The Taxpayer has adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be vacated.

IV. ORDER

IT IS ORDERED THAT:

1. The decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2022 is affirmed.
2. The taxable value of the Subject Property for tax year 2022 is:

Land	\$ 14,660
<u>Improvements</u>	<u>\$ 0</u>
Total	\$ <u>14,660</u>

¹⁶ *Equitable Life v. Lincoln Cty. Bd. of Equal.*, 229 Neb. 60, 63, 425 N.W.2d 320, 322-23 (1988).

¹⁷ *Constructors, Inc. v. Cass Cty. Bd. of Equal.*, 258 Neb. 866, 873, 606 N.W.2d 786, 792 (2000).

¹⁸ \$14,505 per acre x 2.02 acres = \$29,320 x 50% river erosion factor = \$14,660.

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2022.
7. This Decision and Order is effective on September 26, 2024.

Signed and Sealed: September 26, 2024



Steven A. Keetle, Commissioner